

**Overnite Transportation Company and Local 705,  
International Brotherhood of Teamsters, AFL–  
CIO.** Case 13–CA–28668

July 29, 1993

**ORDER DENYING MOTION TO  
RECONSIDER AND GRANTING MOTION TO  
MODIFY NOTICE**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On January 31, 1992, the National Labor Relations Board issued a Decision and Order in this proceeding<sup>1</sup> finding that the Respondent violated Section 8(a)(5) and (1) by, inter alia, refusing to recognize and bargain with the Union as the collective-bargaining representative of the unit employees at the Palatine terminal, which constituted a “spinoff operation” from the main terminal at Bedford Park.<sup>2</sup>

On December 28, 1992, the Respondent filed a motion to modify notice. The Respondent contends that the Board in *Gitano Distribution Center*, 308 NLRB 1172 (1992), overruled its prior decision in *Overnite* to the extent it had found Overnite had an obligation to recognize and bargain with the Union at Palatine. The Respondent therefore requests the Board to modify its notice to delete the provisions regarding this violation.

On December 30, 1992, the Charging Party filed a motion to reconsider, contending that the Palatine terminal is not a separate appropriate unit, and that the Respondent unlawfully ensured that a majority of local drivers at the Palatine terminal were not transferees from Bedford Park. For these reasons, the Charging Party contends that the Board should reaffirm its finding that the Respondent was obligated to bargain with the Union as the representative of the employees at Palatine. On February 22, 1993, the General Counsel filed a brief in support of the Charging Party’s motion to reconsider, contending that the Palatine operation is part of the Bedford Park unit.

On February 2, 1993, the Respondent filed a brief in opposition to the Charging Party’s motion to reconsider, and on April 22, 1993, the Respondent filed an opposition to counsel for the General Counsel’s position in support of Charging Party’s motion to reconsider. The Respondent contends that the General Counsel and the Charging Party have presented no evidence to rebut the presumptive appropriateness of the separate Palatine unit, and that there were no findings or allegations in *Overnite* that it unlawfully structured the employee complement to limit the number of trans-

ferees from Bedford Park to Palatine. The Respondent therefore maintains that the motion to reconsider should be denied.

The Board having duly considered the matter,

IT IS ORDERED that the Charging Party’s motion to reconsider is denied as lacking in merit.<sup>3</sup>

IT IS FURTHER ORDERED that the Respondent’s motion to modify notice is granted.<sup>4</sup>

**SECOND AMENDED CONCLUSIONS OF LAW**

Delete Amended Conclusion of Law 4 and substitute the following for Conclusion of Law 5.

“4. The unfair labor practice found affects commerce within the meaning of Section 2(6) and (7) of the Act.”

**ORDER**

The National Labor Relations Board affirms its previous Order as modified below and orders that the Respondent, Overnite Transportation Company, Bedford Park and Palatine, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(b) and reletter the subsequent paragraph.

2. Delete paragraph 2(b) and reletter the subsequent paragraphs.

3. Substitute the attached notice for that provided in our previous decision.

MEMBER DEVANEY, dissenting.

Contrary to my colleagues, I would grant the Charging Party’s motion to reconsider.

<sup>3</sup>In denying the motion, we reject the Charging Party’s contention that its majority status presumptively continued at Palatine because the Respondent hid the fact that it was opening the Palatine terminal, and limited the number of transferees from Bedford Park. Contrary to the Charging Party’s contention, there were no findings in *Overnite* that the Respondent unlawfully structured the employee complement at Palatine.

<sup>4</sup>We shall modify the amended conclusions of law, Order, and notice set forth in the Board’s decision in *Overnite*, above, in accord with our finding herein that the Respondent did not have a bargaining obligation with respect to the drivers at Palatine.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 705, International Brotherhood of Teamsters, AFL–CIO

<sup>1</sup>306 NLRB 237.

<sup>2</sup>The Board also found that the Respondent violated Sec. 8(a)(5) and (1) by refusing to bargain with the Union concerning the effects on unit employees of the opening of the Palatine terminal. The instant motions do not involve this finding.

concerning the effects on unit employees of our opening of the Palatine terminal.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union about the effects on unit employees of our opening of the Palatine terminal.

OVERNITE TRANSPORTATION COMPANY